

REMARKS

Applicant has received the Decision on Appeal dated September 22, 2008 in which the Appeal Board: 1) affirmed the rejections of claims 1-2, 8-9, 32-36 and 38; and 2) reversed the rejections of claims 5-7 and 40. Moreover, for the first time during appeal claim 41 was objected to as being dependent upon a rejected base claim, but otherwise allowable.

According to the Manual of Patent Examining Procedures (MPEP), when a claim stands allowable prior to appeal except for its dependency from a rejected claim, and no independent claims stand allowed in view of the appeal, the object-to claims are treated as rejected. (MPEP 8th Ed., Rev. 3, August 2005, Section 1214.06(I), p. 1200-59). By contrast, when the Board reverses rejections against dependent claims, but the rejection of the independent claim(s) are affirmed, the Examiner may either amend by Examiner's amendment to re-write the claims into independent form, or set a one month response period for the Applicant to do so. (*Id.*).

Claim 41 was indicated as objected to for the first time in the Reply Brief. Moreover, the rejection of the independent claim from which claim 41 depends was affirmed. In the recited circumstance, it is unclear whether the Examiner has a duty to put claim 41 into allowable condition. Rather than risk losing claim 41, Applicant presents this Response after Decision on Appeal to rewrite claims 5-7 and 40, whose rejections were reversed, into independent form. It is noted that newly independent claims 5 and 40 already contained the limitations by virtue of their previous dependency. Moreover, such an amendment leaves claim 41 dependent from an allowable claim. Finally, rather than cancel claims 8-9, Applicant amends the dependency of claim 8 to depend from allowable claim 5, which places claim 8, and claim 9 which depends from claim 8, into a condition for allowance.

It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. In the event that additional extensions of time are necessary to allow consideration of this paper, however, such extensions are hereby petitioned

Appl. No. 10/080,999

Amdt. dated November 24, 2008

Amdt. Responsive to Decision on Appeal dated September 22, 2008

under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's Deposit Account No. 08-2025.

Respectfully submitted,

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